

CRAVATH, SWAINE & MOORE

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RECORDATION NO. 0361 Filed 1425

MAY 10 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

Burlington Northern Inc.

Lease Financing No. 2 Dated as of February 1, 1979

9.70% Conditional Sale Indebtedness

Due January 1, 1996

[CS&M Ref.: 2164-082]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement No. 2 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders; and

(b) Agreement and Assignment No. 2 dated as of February 1, 1979, between General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

2. (a) Lease of Rail Road Equipment No. 2 dated as of February 1, 1979, between Burlington Northern Inc. and The Connecticut Bank and Trust Company, as Trustee; and

RECEIVED

C. Deuter Rand E T Bryan

9-130A 44

MAY 10 1979

Date 105.10
Fee \$

ICE Washington, D.C.

RECORDATION NO. 0361 Filed

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INTERSTATE COMMERCE COMMISSION

COUNSEL
ROSWELL L. GILPATRIC
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CHARLES R. LINTON

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901

CABLE ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E.C. 2

(b) Assignment of Lease and Agreement No. 2 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee:

The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Owner-Trustee, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of:

101 GMC-EMD 3,000 h.p. Model SD-40-2 diesel-electric locomotives bearing identifying numbers BN 7161-7166, 7889-7923, 8030-8089, inclusive; and

MAY 10 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2164-082]

ASSIGNMENT OF LEASE AND AGREEMENT No. 2 dated as of February 1, 1979, (this "Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY, acting not in its individual capacity but solely in its capacity as Trustee (the "Owner-Trustee") under a Trust Agreement No. 2 (the "Trust Agreement") dated as of the date hereof with the parties named therein (severally an "Owner" and collectively the "Owners"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof (the "Security Documentation") with General Motors Corporation (Electro-Motive Division) and General Electric Company (severally the "Builder" and collectively the "Builders"), providing for the sale to the Owner-Trustee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS the Owner-Trustee and Burlington Northern Inc. (the "Lessee") have entered into a Lease of Railroad Equipment No. 2 dated as of the date hereof (the "Lease") providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as defined in paragraph 4.3(b) of the Security Documentation), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the Security Documentation, all the Owner-Trustee's right, title and interest, powers, privileges and other benefits under the Lease (including those inuring to the benefit of the Owners other than those contained in §20 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease; *provided, however*, that, notwithstanding the foregoing, the Owner-Trustee shall be entitled to receive directly from the Lessee any indemnification provided for the Owner-Trustee under §§6 and 12 of the Lease, which indemnification is excluded from this Assignment (the "Excluded Indemnity"). In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owners on the same date such Payment is applied to satisfy such

obligations of the Owner-Trustee by bank wire to the Owners at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owners. If the Vendor shall not receive any rental payment under §3 of the Lease when due, the Vendor shall notify the Owner-Trustee and each Owner by telegraph, confirmed by registered mail, return receipt requested, at its address set forth in the Lease; *provided, however*, that the failure of the Vendor to so notify the Owner-Trustee and each Owner shall not affect the obligations of the Owner-Trustee hereunder or under the Security Documentation, except that the Vendor may not terminate the Lease or make a Declaration of Default under paragraph 16.1 of Article 16 of the Security Documentation due to an event of default arising by reason of the failure of the Lessee to make any such rental payment unless such event of default is not remedied within five days after notification as aforesaid is given.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums and other obligations due from the Owner-Trustee under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums and other obligations due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and Section 86 of the Railway Act of Canada.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Owner-Trustee that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Documentation, the Owner-Trustee may, so long as no event of default under the Security Documentation has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of §13.1(a) of the Lease; *provided, however*, that the Owner-Trustee shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of §13.1(b) of the Lease.

11. Anything herein to the contrary notwithstanding, each and all of the representations and agreements in this Assignment made on the part of the financial institution acting as Owner-Trustee are each and every one of them made and intended not as personal representations and agreements by said financial institution in its individual capacity, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution, on account of any representation or agreement hereunder of the Owner-Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST
COMPANY, as Trustee as aforesaid,

By 
Authorized Officer

[CORPORATE SEAL]

ATTEST: 
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

By 
Assistant Vice President

[CORPORATE SEAL]

ATTEST: 
Corporate Trust Officer

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD } ss:

On this 23rd day of April, 1979, before me personally appeared F. W. Kawan, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara S. Kacich

Notary Public

[NOTARIAL SEAL]

My Commission expires

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss:

On this 19th day of APRIL, 1979, before me personally appeared R. E. Schreiber, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Shilow
Notary Public

[NOTARIAL SEAL]

My Commission expires 7-1-82

CONSENT AND AGREEMENT

The undersigned, BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as the Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except the Excluded Indemnity defined in Section 1 of the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: BN 2/1/79 No. 2" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;


(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said State.

BURLINGTON NORTHERN INC.;

By


Assistant Vice President,
Financial Planning and Treasurer

[CORPORATE SEAL]

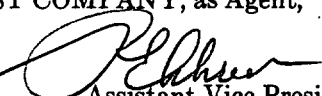
ATTEST:


Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of February, 1979.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

By


Assistant Vice President

[CORPORATE SEAL]

ATTEST:


Corporate Trust Officer

